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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,538	01/23/2002	Curtis G. Wong	MS188917.1	8836
7590	07/25/2005		EXAMINER	
Himanshu S. Amin Amin & Turocy, LLP National City Center, 24th Floor 1900 East Ninth Street Cleveland, OH 44114			BAYERL, RAYMOND J	
		ART UNIT	PAPER NUMBER	2173
DATE MAILED: 07/25/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/055,538

**Applicant(s)**

WONG ET AL.

**Examiner**

Raymond J. Bayerl

**Art Unit**

2173

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1, 4 - 10, 15 - 20, 30 - 40, 43 - 47, 52, 53.

Claim(s) withdrawn from consideration: 11 - 14, 21 - 29, 41, 42, 48 - 51.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 9 Jun 2005  
 13.  Other: See Continuation Sheet.

RAYMOND J. BAYERL  
PRIMARY EXAMINER  
ART UNIT 2173

18 July 2005

**Continuation of 11. Request for Reconsideration:**

A possible embodiment within claims 45 - 47, as disclosed, is one in which information is merely contained within a "carrier wave". However, under current PTO guidelines, a "carrier wave" does not result in a tangible fixing of the information, and thus the 4 statutory classes of invention are not met (e.g., it fails as a process, machine or article of manufacture).

Concerning claims 43, 44, the final office action in fact takes into consideration the amendment made 21 March 2005, contrary to applicant's observation.

Jain et al. (US #6,567,980 B1) continues to apply because of its teaching of metadata annotations being associated with the underlying video. This means that Jain et al. "annotates the selected scene with the metadata", by establishing such an association. Both a first and related "second" item are annotated, these being retrieved together according to criteria that provide for their "relationship".

Morris (US #2002/0088000 A1), in associating metadata with media content, will need to use a linking arrangement such as in claims 45 - 47 (e.g., a pointer within the overall image file of fig 2 that references the tag's storage), and within such a packet, a "user action" is further indicated (e.g., the User Tags 66, fig 3, which can adapt the media).

Duncombe (US #6,813,745 B1) is properly combinable with Jain et al., for the purpose of illustrating a selection interface in which user feedback is obtained and used to direct a playlist. Such a combination is motivated so as to give the Jain user a greater degree of access flexibility. The ground of rejection under 35 USC 103 relies upon a combination of concepts from each reference, and not a literal combination of the entirety of one disclosed embodiment with the entirety of the other. No inoperability of either reference is introduced; annotated media items as per Jain et al. can also be rearranged in a playlist by means of the feedback taught by Duncombe.

**Continuation of 13. Other:**

The IDS filed on 9 June 2005 has been placed in the file, but the reference listed therein has not made of record, since the requirement of MPEP 609 after final rejection is that BOTH a certification under 37 CFR 1.97(e) of prompt filing and the fee under 37 CFR 1.17(i) be supplied (applicant has supplied only the fee).

RAYMOND J. BAYERL  
PRIMARY EXAMINER  
ART UNIT 2173

18 July 2005